

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 575

Introduced by Senator DeSaulnier
(Principal coauthor: Assembly Member Hill)

February 17, 2011

An act to amend Section 6404.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 575, as amended, DeSaulnier. Smoking in the workplace.

Existing law prohibits smoking of tobacco products inside an enclosed space, as defined, at a place of employment. The violation of the prohibition against smoking in enclosed spaces of places of employment is an infraction punishable by a specified fine.

This bill would expand the prohibition on smoking in a place of employment to include an owner-operated business, as defined.

This bill would also eliminate most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, tobacco shops, banquet rooms, warehouse facilities, *private residences used as family day care homes*, and employee break rooms.

By expanding the scope of an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6404.5 of the Labor Code is amended to
2 read:
3 6404.5. (a) The Legislature finds and declares that regulation
4 of smoking in the workplace is a matter of statewide interest and
5 concern. It is the intent of the Legislature in enacting this section
6 to prohibit the smoking of tobacco products in all (100 percent of)
7 enclosed places of employment in this state, as covered by this
8 section, thereby eliminating the need of local governments to enact
9 workplace smoking restrictions within their respective jurisdictions.
10 It is further the intent of the Legislature to create a uniform
11 statewide standard to restrict and prohibit the smoking of tobacco
12 products in enclosed places of employment, as specified in this
13 section, in order to reduce employee exposure to environmental
14 tobacco smoke to a level that will prevent anything other than
15 insignificantly harmful effects to exposed employees, and also to
16 eliminate the confusion and hardship that can result from enactment
17 or enforcement of disparate local workplace smoking restrictions.
18 Notwithstanding any other provision of this section, it is the intent
19 of the Legislature that any area not defined as a “place of
20 employment” pursuant to subdivision (e) shall be subject to local
21 regulation of smoking of tobacco products.
22 (b) For purposes of this section, an “owner-operated business”
23 shall mean a business having no employees, independent
24 contractors, or volunteers, in which the owner-operator of the
25 business is the only worker. “Enclosed space” includes covered
26 parking lots; *and* lobbies, lounges, waiting areas, elevators,
27 stairwells, and restrooms that are a structural part of the building
28 and not specifically defined in subdivision (e).
29 (c) No employer or owner-operated business shall knowingly
30 or intentionally permit, and no person shall engage in, the smoking
31 of tobacco products *in an enclosed space* at a place of employment
32 or ~~in an enclosed space~~ *owner-operated business*.
33 (d) For purposes of this section, an employer or owner-operated
34 business who permits any nonemployee access to his or her place
35 of employment or owner-operated business on a regular basis has

1 not acted knowingly or intentionally in violation of this section if
2 he or she has taken the following reasonable steps to prevent
3 smoking by a nonemployee:

4 (1) Posted clear and prominent signs, as follows:

5 (A) Where smoking is prohibited throughout the building or
6 structure, a sign stating “No smoking” shall be posted at each
7 entrance to the building or structure.

8 (B) Where smoking is permitted in designated areas of the
9 building or structure, a sign stating “Smoking is prohibited except
10 in designated areas” shall be posted at each entrance to the building
11 or structure.

12 (2) Has requested, when appropriate, that a nonemployee who
13 is smoking refrain from smoking in the enclosed workplace or
14 owner-operated business.

15 For purposes of this subdivision, “reasonable steps” does not
16 include (A) the physical ejection of a nonemployee from the place
17 of employment *or owner-operated business* or (B) any requirement
18 for making a request to a nonemployee to refrain from smoking,
19 under circumstances involving a risk of physical harm to the
20 employer or any employee or owner-operator.

21 (e) For purposes of this section, “place of employment” does
22 not include any of the following:

23 (1) Twenty percent of the guestroom accommodations in a hotel,
24 motel, or similar transient lodging establishment.

25 (2) Cabs of motortrucks, as defined in Section 410 of the Vehicle
26 Code, or truck tractors, as defined in Section 655 of the Vehicle
27 Code, if no nonsmoking employees are present.

28 (3) Theatrical production sites, if smoking is an integral part of
29 the story in the theatrical production.

30 (4) Medical research or treatment sites, if smoking is integral
31 to the research and treatment being conducted.

32 (5) Private residences, except for private residences licensed as
33 family day care homes ~~during the hours of operation as family day~~
34 ~~care homes and in those areas where children are present.~~

35 (f) The smoking prohibition set forth in this section shall
36 constitute a uniform statewide standard for regulating the smoking
37 of tobacco products in enclosed places of employment and
38 owner-operated businesses and shall supersede and render
39 unnecessary the local enactment or enforcement of local ordinances
40 regulating the smoking of tobacco products in enclosed places of

1 employment and owner-operated businesses. Insofar as the smoking
2 prohibition set forth in this section is applicable to all (100-percent)
3 places of employment and owner-operated businesses within this
4 state and, therefore, provides the maximum degree of coverage,
5 the practical effect of this section is to eliminate the need of local
6 governments to enact enclosed workplace smoking restrictions
7 within their respective jurisdictions.

8 (g) Nothing in this section shall prohibit an employer or
9 owner-operated business from prohibiting smoking in an enclosed
10 place of employment or owner-operated business for any reason.

11 (h) The enactment of local regulation of smoking of tobacco
12 products in enclosed places of employment or owner-operated
13 businesses by local governments shall be suspended only for as
14 long as, and to the extent that, the (100-percent) smoking
15 prohibition provided for in this section remains in effect. In the
16 event this section is repealed or modified by subsequent legislative
17 or judicial action so that the (100-percent) smoking prohibition is
18 no longer applicable to all enclosed places of employment and
19 owner-operated businesses in California, local governments shall
20 have the full right and authority to enforce previously enacted, and
21 to enact and enforce new, restrictions on the smoking of tobacco
22 products in enclosed places of employment and owner-operated
23 businesses within their jurisdictions, including a complete
24 prohibition of smoking. Notwithstanding any other provision of
25 this section, any area not defined as a “place of employment” or
26 in which smoking is not regulated pursuant to subdivision (e), shall
27 be subject to local regulation of smoking of tobacco products.

28 (i) Any violation of the prohibition set forth in subdivision (c)
29 is an infraction, punishable by a fine not to exceed one hundred
30 dollars (\$100) for a first violation, two hundred dollars (\$200) for
31 a second violation within one year, and five hundred dollars (\$500)
32 for a third and for each subsequent violation within one year. This
33 subdivision shall be enforced by local law enforcement agencies,
34 including, but not limited to, local health departments, as
35 determined by the local governing body.

36 (j) Notwithstanding Section 6309, the division is not required
37 to respond to any complaint regarding the smoking of tobacco
38 products in an enclosed space at a place of employment, unless
39 the employer has been found guilty pursuant to subdivision (i) of
40 a third violation of subdivision (c) within the previous year.

1 (k) If any provision of this section or the application thereof to
2 any person or circumstances is held invalid, that invalidity shall
3 not affect other provisions or applications of the section that can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this section are severable.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.